

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2758**

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**Introduced by Assembly Member Bradford**

February 19, 2010

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~~An act to add Section 249 to the Public Utilities Code, relating to energy.~~ *An act to amend the heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of, and to amend Sections 8281, 8282, 8283, 8284, 8285, and 8286 of, the Public Utilities Code, relating to Public Utilities Commission regulated corporations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2758, as amended, Bradford. ~~Public Utilities Commission: energy goals.~~ *Public utilities and cable television corporations: procurement: veterans.*

*(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations, and cable television corporations, as provided. Existing law directs the commission to require every electrical, gas, water, and telephone corporation with annual gross revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to implement a program developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information. The commission, by rulemaking, adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements.*

*This bill would make cable television corporations with annual gross revenues exceeding \$25,000,000 subject to these requirements and would require the corporations subject to these requirements to expand the above programs to include veteran business enterprises, as defined. The bill would also require the corporations subject to these requirements to provide information to the commission about which procurements are made with women, minority, veteran, and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California.*

*Under existing law, a violation of any provision of the Public Utilities Act or any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a woman, minority, or disabled veteran business enterprise for the purposes of the programs discussed above is subject to criminal penalties.*

*Because a violation of the requirements of the bill would be a crime under those provisions, this bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined.~~

~~This bill would require the commission to develop a framework that encourages developers to utilize appliances and structures in their developments that further the energy efficiency and renewable energy goals of the state.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The heading of Article 5 (commencing with
- 2     Section 8281) of Chapter 7 of Division 4 of the Public Utilities
- 3     Code is amended to read:

1 Article 5. Women~~and~~, Minority, *Veteran, and Disabled Veteran*  
2 Business Enterprises  
3

4 SEC. 2. *Section 8281 of the Public Utilities Code is amended*  
5 *to read:*

6 8281. (a) The Legislature hereby finds and declares that the  
7 essence of the American economic system of private enterprise is  
8 free, *open, and transparent* competition. Only through ~~full and~~  
9 free, *open, and transparent* competition can free markets,  
10 reasonable and just prices, free entry into business, and  
11 opportunities for the expression and growth of personal initiative  
12 and individual judgment be assured. The preservation and  
13 expansion of that competition is basic to the economic well-being  
14 of this state and that well-being cannot be realized unless the actual  
15 and potential capacity of women, minority, *veteran*, and disabled  
16 veteran business enterprises is encouraged and developed.  
17 Therefore, it is the declared policy of the state to aid the interests  
18 of women, minority, *veteran*, and disabled veteran business  
19 enterprises in order to preserve reasonable and just prices and a  
20 free competitive enterprise, to ensure that a fair proportion of the  
21 total purchases and contracts or subcontracts for commodities,  
22 supplies, technology, property, and services for regulated public  
23 utilities, *including, but not limited to, renewable energy, wireless*  
24 *telecommunications, broadband, smart grid, and rail projects*, are  
25 awarded to women, minority, *veteran*, and disabled veteran  
26 business enterprises, and to maintain and strengthen the overall  
27 economy of the state.

28 (b) (1) The Legislature finds all of the following:

29 (A) The opportunity for full participation in our free enterprise  
30 system by women, minority, *veteran*, and disabled veteran business  
31 enterprises is essential if this state is to attain social and economic  
32 equality for those businesses and improve the functioning of the  
33 state economy.

34 (B) Public agencies *and some regulated utilities* which have  
35 established short- and long-range women, minority, and disabled  
36 veteran business enterprise goals are awarding 30 percent or more  
37 of their contracts to these business enterprises.

38 (C) Women, minority, *veteran*, and disabled veteran business  
39 enterprises have traditionally received less than a proportionate  
40 share of regulated public utility procurement contracts, *especially*

1 *in renewable energy, wireless telecommunications, broadband,*  
2 *smart grid, and rail projects.*

3 (D) It is in the state's interest to expeditiously improve the  
4 economically disadvantaged position of women, minority, *veteran,*  
5 and disabled veteran business enterprises.

6 (E) The position of these businesses can be *substantially*  
7 improved by providing long-range substantial goals for  
8 procurement by regulated public utilities of technology, equipment,  
9 supplies, services, materials, and construction work, *especially in*  
10 *renewable energy, wireless telecommunications, broadband, smart*  
11 *grid, and rail projects,* from women, minority, *veteran,* and  
12 disabled veteran businesses.

13 (F) That procurement also benefits the regulated public utilities  
14 and consumers of the state by encouraging the expansion of the  
15 number of suppliers for procurements, thereby encouraging  
16 competition among the suppliers and promoting economic  
17 efficiency in the process.

18 (G) *That the long-term economic viability of this state depends*  
19 *substantially upon the ability of renewable energy, wireless*  
20 *telecommunications, broadband, smart grid, and rail projects to*  
21 *incorporate women, minority, veteran, and disabled veteran*  
22 *businesses into those projects.*

23 (2) It is the purpose of this article to do all of the following:

24 (A) Encourage greater economic opportunity for women,  
25 minority, *veteran,* and disabled veteran business enterprises.

26 (B) Promote competition among regulated public utility  
27 suppliers in order to enhance economic efficiency in the  
28 procurement of electrical, gas, water, *cable television,* and  
29 telephone corporation contracts and contracts of their  
30 commission-regulated subsidiaries and affiliates.

31 (C) Clarify and expand the program for the procurement by  
32 regulated public utilities of technology, equipment, supplies,  
33 services, materials, and construction work from women, minority,  
34 *veteran,* and disabled veteran business enterprises.

35 SEC. 3. *Section 8282 of the Public Utilities Code is amended*  
36 *to read:*

37 8282. For the purposes of this article, the following definitions  
38 apply:

39 (a) "Women business enterprise" means a business enterprise  
40 that is at least 51 percent owned by a woman or women; or, in the

case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.

(b) “Minority business enterprise” means a business enterprise that is at least 51 percent owned by a minority group or groups; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

(c) “Disabled veteran business enterprise” has the same meaning as defined in ~~subdivision (g)~~ of Section 999 of the Military and Veterans Code.

(d) “Control” means exercising the power to make policy decisions.

(e) “Operate” means being actively involved in the day-to-day management and not merely officers or directors.

(f) “*Veteran business enterprise*” means a business enterprise that meets the requirements of a “disabled veteran business enterprise” except that the requirement that the veterans qualifying the business under this article need not be disabled.

SEC. 4. Section 8283 of the Public Utilities Code is amended to read:

8283. (a) The commission shall require each electrical, gas, water, *cable television*, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates, to submit annually, a detailed and verifiable plan for increasing *procurement from women, minority, veteran, and disabled veteran business enterprise procurement enterprises* in all categories, *including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects*.

(b) These annual plans shall include short- and long-term goals and timetables, but not quotas, and shall include methods for encouraging both prime contractors and grantees to engage women, minority, *veteran*, and disabled veteran business enterprises in subcontracts in all categories which provide subcontracting

1 opportunities, *including, but not limited to, renewable energy,*  
2 *wireless telecommunications, broadband, smart grid, and rail*  
3 *projects.*

4 (c) The commission shall establish guidelines for all electrical,  
5 gas, water, *cable television*, and telephone corporations with gross  
6 annual revenues exceeding twenty-five million dollars  
7 (\$25,000,000) and their commission-regulated subsidiaries and  
8 affiliates, to be utilized in establishing programs pursuant to this  
9 article.

10 (d) Every electrical, gas, water, *cable television*, and telephone  
11 corporation with gross annual revenues exceeding twenty-five  
12 million dollars (\$25,000,000) shall furnish an annual report to the  
13 commission regarding the implementation of programs established  
14 pursuant to this article in a form that the commission shall require,  
15 and at the time that the commission shall annually designate. *These*  
16 *corporations shall also provide information to the commission*  
17 *about which procurements are made with women, minority,*  
18 *veteran, and disabled veteran business enterprises with at least a*  
19 *majority of the enterprise's workforce in California.*

20 (e) The commission shall provide a report to the Legislature on  
21 September 1 of each year, on the progress of activities undertaken  
22 by each electrical, gas, water, *cable television*, and telephone  
23 corporation with gross annual revenues exceeding twenty-five  
24 million dollars (\$25,000,000) pursuant to this article in the  
25 implementation of women, minority, *veteran* and disabled veterans  
26 business enterprise development programs. *The report shall include*  
27 *information about which procurements are made with women,*  
28 *minority, veteran, and disabled veteran business enterprises with*  
29 *at least a majority of the enterprise's workforce in California.* The  
30 commission shall recommend a program for carrying out the policy  
31 declared in this article, together with recommendations for  
32 legislation that it deems necessary or desirable to further that  
33 policy.

34 (f) The Legislature declares that each electrical, gas, water,  
35 *cable television*, and telephone corporation that is not required to  
36 submit a plan pursuant to subdivision (a) is encouraged to  
37 voluntarily adopt a plan for increasing women, minority, *veteran*,  
38 and disabled veteran business enterprise procurement in all  
39 categories.

1     *SEC. 5. Section 8284 of the Public Utilities Code is amended*  
2     *to read:*

3     8284. (a) The commission shall, by rule or order, adopt criteria  
4     for verifying and determining the eligibility of women, minority,  
5     *veteran*, and disabled veteran business enterprises for procurement  
6     contracts.

7     (b) The commission shall develop, and require every electrical,  
8     gas, water, *cable television*, and telephone corporation with gross  
9     annual revenues exceeding twenty-five million dollars  
10    (\$25,000,000) and their commission-regulated subsidiaries and  
11    affiliates to implement, an outreach program to inform and recruit  
12    women, minority, *veteran*, and disabled veteran business  
13    enterprises to apply for procurement contracts under this article.

14    *SEC. 6. Section 8285 of the Public Utilities Code is amended*  
15    *to read:*

16    8285. Any person or corporation, through its directors, officers,  
17    or agents, which falsely represents a business as a women,  
18    minority, *veteran*, or disabled veteran business enterprise in the  
19    procurement of, or attempt to procure, contracts from an electrical,  
20    gas, water, *cable television*, or telephone corporation with gross  
21    annual revenues exceeding twenty-five million dollars  
22    (\$25,000,000), or a commission-regulated subsidiary or affiliate  
23    subject to this article, shall be punished by a fine of not more than  
24    five thousand dollars (\$5,000), by imprisonment in a county jail  
25    for not more than one year or in the state prison, or by both that  
26    fine and imprisonment. In the case of a corporation, the fine or  
27    imprisonment, or both, shall be imposed on every director, officer,  
28    or agent responsible for the false statements.

29    *SEC. 7. Section 8286 of the Public Utilities Code is amended*  
30    *to read:*

31    8286. In order to facilitate the participation of women-owned  
32    businesses, minority-owned businesses, *veteran-owned businesses*,  
33    *disabled veteran-owned businesses*, and small businesses in  
34    contract procurement, any corporation subject to this article may  
35    consider the following measures to include those businesses in all  
36    phases of their contracting:

37    (a) Timely or progressive payments to those businesses.

38    (b) An amendment of the performance bond requirements ~~when~~  
39    ~~past performance within a specified area of business justifies that~~  
40    ~~consideration so that bond requirements of electrical, gas, cable~~

1 *television, and telephone corporations do not prohibitively burden*  
2 *those businesses from procuring the corporation's business.*

3 (c) The provision of assistance to those businesses by securing  
4 contract payments to those businesses with letters of credit,  
5 negotiable securities, or other financing arrangements or measures.

6 *SEC. 8. No reimbursement is required by this act pursuant to*  
7 *Section 6 of Article XIII B of the California Constitution because*  
8 *the only costs that may be incurred by a local agency or school*  
9 *district will be incurred because this act creates a new crime or*  
10 *infraction, eliminates a crime or infraction, or changes the penalty*  
11 *for a crime or infraction, within the meaning of Section 17556 of*  
12 *the Government Code, or changes the definition of a crime within*  
13 *the meaning of Section 6 of Article XIII B of the California*  
14 *Constitution.*

15 ~~SECTION 1. Section 249 is added to the Public Utilities Code,~~  
16 ~~to read:~~

17 ~~249. The commission shall develop a framework that~~  
18 ~~encourages developers to utilize appliances and structures in their~~  
19 ~~developments that further the energy efficiency and renewable~~  
20 ~~energy goals of the state, including, where appropriate, the creation~~  
21 ~~of ownership interests in credits for those measures.~~